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# Supreme Court of the United States

OCTOBER TERM, 1949

INTERSTATE EQUIPMENT CORPORATION,
*Petitioner,*

*vs.*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, THE HONORABLE GUY L. FAKE, THE CHIEF JUDGE THEREOF, and HARTFORD ACCIDENT & INDEMNITY COMPANY, to the respective and individual use of Esther F. and Earl C. Silva, George W. Johnson, Henry K. Plemer and Hiram John,
*Respondents.*

**On Petition for Writ of Certiorari**

## RESPONDENT'S BRIEF.

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# INDEX.


| | PAGE |
|---|---|
| ARGUMENT | 1 |
| THE PROCEEDINGS ARE PREMATURE | 1 |
| CONCLUSION | 4 |


TABLE OF CITATIONS.

*Cases:*


| | |
|---|---|
| *Roche* v. *Evaporated Milk Association*, 319 U. S. 21 (1943) | 2 |


STATUTES.


| | |
|---|---|
| Sec. 1291, Title 28, U. S. C. | 1 |
| Sec. 1292, Title 28, U. S. C. | 1 |

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**On Petition for Writ of Certiorari**

## RESPONDENT'S BRIEF.

## ARGUMENT.

### The Proceedings are Premature.

The orders of the District Court sought to be reviewed are not final decisions which may be reviewed pursuant to the authority of sec. 1291 of Title 28, U. S. C., nor are they of any of the classes of interlocutory orders appealable under sec. 1292 of that Title. The effect of these orders is to leave the actions still pending and undetermined with leave granted the present petitioner to file amended answers. Nor can mandamus or prohibition be availed

of to effect a review. In *Roche* v. *Evaporated Milk Association,* 319 U. S. 21 (1943), Chief Justice Stone said (at pp. 27-31):

> "Ordinarily mandamus may not be resorted to as a mode of review where a statutory method of appeal has been prescribed or to review an appealable decision of record. Ex parte Morgan, 114 U. S. 174, 175, 29 L. ed. 135, 136, 5 S. Ct. 825; Re Atlantic City R. Co., 164 U. S. 633, 635, 41 L. ed. 579, 580, 17 S. Ct. 208; Ex parte Roe, 234 U. S. 70, 73, 58 L. ed. 1217, 1218, 34 S. Ct. 722; Ex parte Park Square Auto. Station, 244 U. S. 412, 414, 61 L. ed. 1231, 1232, 37 S. Ct. 732; Ex parte Riddle, 255 U. S. 450, 451, 65 L. ed. 725, 726, 41 S. Ct. 370. Circuit courts of appeals, with exceptions not now material, have jurisdiction to review only final decisions of district courts, 28 U. S. C. A., § 225 (a), 7 F. C. A. title 28, § 225 (a). Respondents stress the inconvenience of requiring them to undergo a trial in advance of an appellate determination of the challenge now made to the validity of the indictment. We may assume, as they allege, that that trial may be of several months' duration and may be correspondingly costly and inconvenient. But that inconvenience is one which we must take it Congress contemplated in providing that only final judgment should be reviewable. Where the appeal statutes establish the conditions of appellate review an appellate court cannot rightly exercise its discretion to issue a writ whose only effect would be to avoid those conditions and thwart the Congressional policy against piecemeal appeals in criminal cases. Cobbledick *v.* United States, 309 U. S. 323, 84 L. ed. 783, 60 S. Ct. 540. As was pointed out by Chief Justice Marshall, to grant the writ in such a case would be a 'plain evasion' of the Congressional enactment that only final judgments be brought up for appellate review. 'The effect therefore of this mode of interposition would

be to retard decisions upon questions which were not final in the court below, so that the same cause might come before this Court many times before there could be a final judgment.' Bank of Columbia *v.* Sweeney, 1 Pet. (U. S.) 567, 569, 7 L. ed. 265, 266. See also Life & F. Ins. Co. *v.* Adams, 9 Pet. (U. S.) 573, 602, 9 L. ed. 234, 244; Ex parte Hoard, 105 U. S. 578, 579, 580, 26 L. ed. 1176, 1177; American Constr. Co. *v.* Jacksonville, T. & K. W. R. Co., 148 U. S. 372, 379, 37 L. ed. 486, 489, 13 S. Ct. 758.

For that reason this Court has consistently refused to sustain the use of mandamus as a means of reviewing the action of a district court in denying a motion to remand a cause to the state court from which it had been removed. Ex parte Hoard, 105 U. S. 578, 26 L. ed. 1176; Ex parte Harding, 219 U. S. 363, 55 L. ed. 252; Ex parte Roe, 234 U. S. 70, 58 L. ed. 1217, 34 S. Ct. 722, and Ex parte Park Square Auto. Station, 244 U. S. 412, 61 L. ed. 1231, 37 S. Ct. 732, supra. And for the same reason it has held in other cases that the writ will not issue to review an order overruling a plea to the jurisdiction, Re Atlantic City R. Co., 164 U. S. 633, 41 L. ed. 579, 17 S. Ct. 208, supra; Re Chicago, R. I. & P. R. Co., 255 U. S. 273, 280, 65 L. ed. 631, 635, 41 S. Ct. 288; cf. Re New York & P. R. S. S. Co., 155 U. S. 523, 531, 39 L. ed. 246, 249, 15 S. Ct. 183, or denying a non-suit, Ex parte Loring, 94 U. S. 418, 24 L. ed. 165, despite the inconvenience to petitioner of being forced to proceed to trial in advance of a review of the court's action. Ex parte Whitney, 13 Pet. (U. S.) 404, 408, 10 L. ed. 221, 223; Ex parte Perry, 102 U. S. 183, 186, 26 L. ed. 43, 44. Here the inconvenience to the litigants results alone from the circumstance that Congress has provided for review of the district court's order only on review of the final judgment, and not from an abuse of judicial power, or refusal to exercise it, which it is the function of mandamus to correct."

In being required to go to trial and to await a final decision, this petitioner will be put to an inconvenience which certainly is not so great as that of the respondent in the case just cited.

The Court of Appeals quite properly dismissed the appeals before it and denied petitioner's application for mandamus or prohibition.

## Conclusion.

**It is respectfully submitted that the petition for writ of certiorari to the United States Court of Appeals for the Third Circuit, should be denied.**

Respectfully submitted,

COULT AND SATZ,
Attorneys for Respondents.

HARRY V. OSBORNE, JR.,
Of Counsel.